



SUBMISSION TO THE RELIGIOUS FREEDOM REVIEW

February 2018

The Expert Panel on Religious Freedom
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Contents

1. Summary	2
2. Terms of Reference.....	2
3. About Equal Voices	2
4. Human Rights: A Christian Perspective.....	3
5. Nature of Religious Freedom	3
a. Defining Religious Freedom	3
b. Limitations upon Religious Freedom	4
6. Religious Freedom and Religious Exceptions.....	4
7. Should We Extend Religious Exceptions? Issues for Consideration	6
a. Competing Religious Freedoms	6
b. Christian Responsibilities	7
8. Recommendations	9
9. Signatories to the Submission.....	10
10. References	11

1. Summary

This submission will examine claims made by some sections of the church for the greater exercise of 'religious freedom' in Australia, particularly claims that freedom is under threat and must be privileged ahead of the rights of others to enjoy equality and dignity. We will demonstrate that the understanding of Australia as a 'soft secularist' society necessitates that religious exceptions to anti-discrimination law cannot be at the expense of the equality of all citizens, particularly given the advocacy from some sections for 'no separation of church and State'.¹

We will show through actual example that the co-existence of equality and religious freedom is a reality in Australia, and that our existing laws work well to protect the rights of all.

We will argue that sufficient protection exists for religious freedom in Australia, and that further privileges and exceptions to anti-discrimination law would be unacceptable to us as Christians.

2. Terms of Reference

In addressing the Terms of Reference for this Inquiry², we will examine how we, as Australian Christians, see the enjoyment of religious freedom interacting with other human rights. We will examine our Christian stance regarding the equality and dignity of all citizens, which we believe underpins such rights.

In preparing this submission, we have examined the findings of the Joint Standing Committee Report on *Legal Foundations of Religious Freedom in Australia*³, particularly regarding definitions of religion, religious freedom, the importance of doctrine and belief and the impact of this freedom on individual rights.

3. About Equal Voices

Equal Voices is a not-for-profit, non-denominational organisation of Australian Christians committed to the full inclusion and equality of people who are lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) in the life of the church.

We are convicted that parts of the Christian community have been unloving and exclusionary, and we work with churches and Christians to educate on the harm done and to work for reconciliation.

<https://equalvoices.org.au/>

¹ Stead, M. 'Secular Australia?' CASE Online Library, *The Centre for Christian Apologetics, Scholarship & Education*. Viewed 26 Jan 2018, <https://www.case.edu.au/blogs/case-subscription-library/secular-australia>

² Australian Government, Department of the Prime Minister and Cabinet. Religious Freedom Review Terms of Reference. Viewed 11 Jan 2018, <https://www.pmc.gov.au/resource-centre/domestic-policy/religious-freedom-review-terms-reference>

³Parliament of the Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade. *Interim Report: Legal Foundations of Religious Freedom in Australia*, Parliament of Australia, Canberra, 2017

4. Human Rights: A Christian Perspective

The International Covenant on Civil and Political Rights (ICCPR), to which Australia is party⁴ recognises that rights derive from 'the inherent dignity of the human person' and that further, these equal and inalienable rights extend to all individuals, without distinction of any kind.

As Christians, we believe that this inherent equality and dignity of every person arises from their being made in the image of God. Consequently, disrespect for the rights of any person has repercussions not only for that person, but the community as a whole.

Subsequently, we argue that Australia's anti-discrimination laws be supported because respect for the human dignity of the person is integral to our faith, rather than because of a 'tendency in secular society to see human rights law as almost synonymous with non-discrimination.'⁵ Respect for human rights drives our commitment to non-discrimination, rather than the other way around.

Some Christians have raised concern about formal protection of human rights in Australian law, particularly regarding the most appropriate forum for arbitration of rights. The argument is made that 'the populace and Parliament', rather than the Court, should be the place for rights adjudication.⁶

We put that the time has come for informed and inclusive discussion on how we balance and protect the rights and freedoms of all Australians.

5. Nature of Religious Freedom

a. Defining Religious Freedom

Definitions of 'religious freedom' vary, not least because 'religion' is itself difficult to define in a way that would satisfy all religious adherents,⁷ and would vary in different contexts.⁸ The Joint Standing Committee acknowledged that the 'intangible nature' of religion or belief presents a challenge⁹; however, settled on the 'broad conception' of religion, including theistic, non-theistic and atheistic beliefs, as well as non-religious systems of belief and the absence of any belief system.¹⁰

According to Article 18 of the ICCPR¹¹: 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching'.

⁴United Nations Office of the High Commissioner on Human Rights (OHCHR). 'International Covenant on Civil and Political Rights'. Professional Interest, *Office of the High Commissioner on Human Rights*. Viewed 16 Jan 2018, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁵ Parkinson, P. 'Christian concerns about an Australian Charter of Rights'. *Australian Journal of Human Rights*, vol.15(2), 2010, p106

⁶ Ibid, p 86

⁷ Parliament of the Commonwealth of Australia, Joint Standing Committee, op.cit., p15.

⁸ Ibid, p 16.

⁹ Ibid, p.15

¹⁰ Ibid, p.17

¹¹ OHCHR, op.cit.

Article 18 provides no guidance as to the level of connection required for the belief to constitute manifestation; however it is clear that the right to hold a belief is broader than the freedom to act upon it,¹² because of the potential impact on others.

b. Limitations upon Religious Freedom

Freedom to hold beliefs are absolute, while the freedom to manifest beliefs are subject to limitations: to the extent that such manifestation impinges upon the 'fundamental rights and freedoms of others'.¹³

Such limitations upon religious freedoms have been recognised by the Christian Church itself. In 1991, Pope John Paul II stated:

"Freedom of conscience does not confer a right to indiscriminate recourse to conscientious objection. When an asserted freedom turns into licence or becomes an excuse for limiting the rights of others, the State is obliged to protect, also by legal means, the inalienable rights of its citizens against such abuses".¹⁴

The *Joint Standing Committee* similarly noted: 'The right to manifest a religion or belief is not absolute, as the manifestation of one's beliefs may impact the enjoyment of the rights of other people.'¹⁵

Eminent Protestant theologian Abraham Kuyper offered this: 'The sovereignty of the Church finds its natural limitation in the sovereignty of the free personality. Sovereign within her own domain, she has no power over those who live outside the sphere. And whenever, in violation of this principle, transgression of power may occur, the government has to respect the claims on protection of every citizen...' ¹⁶

6. Religious Freedom and Religious Exceptions

Concern has been raised that there is little formal protection in Australia for freedom of religion. This both correct and incorrect. To the former, we point out that Australia is alone among democratic parties to the ICCPR in failing to implement a Bill of Rights. Such Bills in other democracies (the United States, Canada) explicitly protect freedom of religion but implementation of such a Bill has in Australia been opposed by certain sectors, including quarters within the church.¹⁷

¹² Australian Human Rights Commission, *Freedom to believe and the freedom to manifest that belief*. Viewed on 10 Feb 2018. <https://www.humanrights.gov.au/freedom-believe-and-freedom-manifest-belief>

¹³ OHCHR, op.cit.

¹⁴ The Holy See. Message of His Holiness Pope John Paul II for the XXIV World Day of Peace: 'If You Want Peace, Respect the Conscience of Every Person. John Paul II, Messages. *The Holy See*. Viewed 26 Jan 2018, http://w2.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_08121990_xxiv-world-day-for-peace.html

¹⁵ Parliament of Australia, Joint Standing Committee, op.cit, p. 29

¹⁶ Hosen, N. & Mohr, R. *Law and Religion in Public Life*, Routledge, Oxon, 2011, p. 22

¹⁷ Parkinson, P. op.cit.

However, lawful exceptions and exemptions to Australia's anti-discrimination laws provide for the expression and manifestation of religious belief. These exceptions are granted under the *Sex Discrimination Act 2013* (Cth) and pertain to certain attributes only.¹⁸

Some raise concern that religious belief is not explicitly protected in anti-discrimination law while sex, sexual orientation, gender identity, race, age and disability are protected attributes. This is a somewhat disingenuous claim when religious bodies enjoy broad exceptions under the *Sex Discrimination Act 2013* (Cth), but only as regards people with certain attributes.

It is inconsistent to complain that 'religious belief is not a protected attribute' while at the same time privilege in the form of exceptions – against certain people only – are enjoyed by religious bodies

Opposition to certain anti-discrimination protections has been raised on the basis that the ICCPR does not specifically mention sexual orientation or gender identity.¹⁹ However, Australia has recognised that Article 26 of the ICCPR 'requires non-discrimination on a range of attributes, including 'other status', which encompasses a person's sexuality'²⁰. The successful case of *Toonen v. Australia 1994*, which overturned Tasmania's laws criminalising homosexuality, relied in part on Article 26.²¹

We note the timing of this Inquiry, following soon after legislation to allow same-sex couples to marry. Tellingly, no inquiries into religious freedom were called following legislation allowing for divorce, IVF or surrogacy; all equally contentious issues for people of faith.

Christians continue to work and manifest their beliefs freely in Australia. Christian employers continue to employ LGBTIQ people, as they do people from a wide variety of backgrounds. Employers are not seeking additional grounds in the area of religious freedom:

"I am employed by a Christian-run hospital which has a no-discrimination policy regarding sexual orientation and relationship status. I have been well supported by colleagues and staff and by hospital administration. My partner and I are welcome at hospital functions. There are quite a number of LGBT people on staff, and they are employed for the work they do regardless of sexual orientation or relationships."

- JW, NSW (email statement to Equal Voices, 8 Feb 2018)

¹⁸ Rees, N. et al, *Australian anti-discrimination law (2nd ed.)*, The Federation Press, Sydney, 2014, p.523

¹⁹ FamilyVoice Australia. 'Submission on the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013'. Submission 3.

²⁰ Rees, N. et al, op.cit. p.451

²¹ Joseph, S. 'Gay Rights Under the ICCPR – Commentary on *Toonen v Australia*', *University of Tasmania Law Review*. 13 (2), 1994, p.398

7. Should We Extend Religious Exceptions? Issues for Consideration

a. Competing Religious Freedoms

Determining the point of encroachment upon others' rights raises difficult questions. What limitations, if any, should be placed on the manifestation of religious belief? More precisely, which religious beliefs should be protected?

Would Christians be happy to accept discrimination and refusal of service or employment on the basis of their religious identity?

We get into difficulty when advocating on one hand for religious pluralism and respect for all religions²², and on the other that church and State should not be separate. The very fact that Christians speak of *church* and State shows a Christian-centric view of how national affairs should be conducted: contrary to the soft secular belief that no religion be privileged over another. At some point, arbitration between religious beliefs will be required, especially when discrimination on such grounds is sought.

Sullivan describes the impossibility of defining the 'connection between the individuals asserting rights to religious freedom and the tradition with which they associate themselves'²³, noting that not all adherents to a religion agree with each and every belief.

Further, the church-State arrangement cannot be a one-way street. Influence over State affairs and policy will demand to be balanced with some examination of religious activity, especially in the matter of essential service provision, or extension into the realm of private enterprise. When religious exceptions are employed in enterprises not undertaken for the purposes of religion, we enter the realm of 'conscientious objection'. Only one type of conscience is privileged: the religious one. Additionally, we now have a 'free-for-all' with no common standard governing public interaction.

Let's deal here with the concern that anti-discrimination laws will force business owners and professionals to provide goods and services that are grossly offensive to their faith and beliefs.

Examples include a Christian baker asked to make a cake with blasphemous wording. Why should this baker be able to refuse such a request, when same-sex couples ask for equal service in the supply of cakes for their weddings?

This is false equivalence. In the first case, the *item* itself is offensive, not the provision of it. The baker would refuse to supply such a cake to anyone, at any time. It is not the provision of service to *certain people* that is the issue. The business owner asks: would I provide this item to others without hesitation? We would imagine that most Christian bakers (and other service providers) do not question heterosexual couples as to previous marriages and divorces, children out-of-wedlock and so on. And yet, no concern about being 'forced to participate' in the wedding celebrations are raised.

²² Stead, M. op. cit.

²³ Sullivan, W.F. *The Impossibility of Religious Freedom*. Princeton University Press, Princeton, USA, 2005, p. 123

Christians have expressed concerns about further exceptions to anti-discrimination laws, both in employment and in the provision of services:

“As a Christian owner of a small business, I would not endorse, permit or support in any way, discrimination on the basis of someone’s sexual or gender identity. We have internal non-discrimination policies that cover sexuality and gender. However, this applies to not just employees but all those with whom we have commercial dealings. Such discrimination is contrary to the values and foundations of my faith.”

- A.M., Victoria (email statement to Equal Voices, 9 Feb 2018)

and:

“We here at Bone & Willow take our faith very seriously. We believe that Christ accepts all, regardless of the sexual orientation, gender, age, race or religious background. Because of this belief we offer our services to all lovingly and without discrimination.”

- Amanda Buijs, Owner and Wedding Stylist at Bone & Willow (email statement to Equal Voices, 11 Feb 2018)

Civil celebrants of Christian faith also expressed concerns:

“My name is Becky Bauer and I pastor Melbourne Inclusive Church. We are a Christian church dedicated to sharing the love of Christ with all people. I am also a civil celebrant. I support marriage equality and do not see that any further legislation is required. We are happy to minister to and marry any couple who wish to commit to a lifetime together. I believe that further legislation only serves to divide this nation and will underpin the great work that has been done in achieving marriage equality and a fair go for all Australians.”

- Pastor Becky Bauer, Melbourne Inclusive Church, VIC (email statement to Equal Voices, 9 Feb 2018)

b. Christian Responsibilities

Those denied equal treatment in service provision are often advised to ‘go somewhere else’. Essentially, this employs a free market solution in the matter of individual rights: putting those rights ‘out to tender’ for providers to decide. This is problematic when religious bodies demand that public funding not be tied to adherence to anti-discrimination law and government policy²⁴; even though citizens denied service have no right to refuse to pay tax to provide this funding.

Religious bodies do provide essential services that complement those provided by Government, especially in remote and rural Australia. This is often used as argument by those who wish to extend the rights to discriminate: that compliance with anti-discrimination will drive such providers out. Yet the very fact that services are provided to vulnerable people in remote areas with nowhere else to go, or who require specialty services, should inform behaviour. In any case, the availability and proximity

²⁴ Anglican Church Diocese of Sydney, ‘Submission to the Inquiry in to the Status of the Human Right to Freedom of Religion or Belief’. Submission 178, p. 5.

of other services should not be the issue. Respect for the dignity of others should drive the behaviour of people of faith.

African-American academic Patricia Williams described the impact of differential treatment:

"I wonder if the violence and the exclusionary hatred are equally apparent in the repeated public urging that blacks put themselves in the shoes of white store owners, and that, in effect, blacks look into the mirror of frightened whites faces to the reality of their undesirability; and that then blacks would "just as surely conclude that [they] would not let [themselves] in under similar circumstances.""²⁵

Critically, the greatest impact may be on *Christians*: those who are LGBTIQ who will be and will feel even more vulnerable in their places of worship, communities and employment.

Certainly heterosexual people do not face the kind of scrutiny in their workplaces and faith communities as do LGBTIQ people, including Christians. Perhaps those calling for greater religious exceptions may like to consider this reflection on freedom from an Australian Christian:

"The reality is that LGBTI+ Christians have so little protection or sense of security and well-being in church situations that very few people are in a position [to be open]. So many people live two lives, or denial and/or deception is forced upon them/us...LGBTI+ people are everywhere, contributing happily and with happiness from their church employers, but we are so hidden and vulnerable that we can't easily show this. Any 'protective' legislation will both drive people out in some circumstances, or deeper underground, and make this process of becoming visible, safe and more healthy much more difficult".

- R.D., Qld (email statement to Equal Voices, 6 Feb 2018)

²⁵ Williams, P. 'Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism', *University of Miami Law Review*, 42 (1/8), p. 129

8. Recommendations

Equal Voices makes the following recommendations to the Review Panel:

1. Equal Voices submits that existing exceptions and exemptions to Australia's anti-discrimination laws adequately provide for the expression and manifestation of the religious beliefs of people of varied faiths.
2. Equal Voices strongly recommends that no further exceptions and exemptions to Australia's anti-discrimination laws be approved.
3. Equal Voices recommends proper, considered and informed discussion regarding an Australian Charter of Rights, and that such a Charter should protect the rights and freedoms of all Australians. Discussion may take the form of a national summit and should consult widely and include as many community and faith voices as possible.

On behalf of the Board and Executive of Equal Voices:

Natalie Cooper

Co-chair | Director

Fr Thomas Peacock

Director

Dr Irene Stein

Director

9. Signatories to the Submission

This Submission to the Religious Freedom Review is supported by:

Rev. Dr John Mark Capper	Director Learning and Teaching, University of Divinity
Very Rev. Dr Peter Catt	President, A Progressive Christian Voice (Australia)
Pastor Brad Chilcott	Activate Church
Rev. Neil Erickson	Minister (Retired), Uniting Church in Australia
Rev. Ben Gilmour	Minister, Paddington Uniting Church
Rev. Dr Avril Hannah-Jones	Minister, Uniting Church in Australia
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Rev. J. Peter Weeks	Minister, Uniting Church in Australia
Rev. Dr Robyn Whitaker	Lecturer in Biblical Studies, Trinity College Theological School

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